



**Republic v Public Procurement Administrative Review Board; Intertek Testing Services EA Limited & another (Interested Parties); Sgs Kenya Limited (Ex parte Applicant) (Application 496 of 2017) [2025] KEHC 10529 (KLR) (Judicial Review) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10529 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW  
APPLICATION 496 OF 2017**

**JM CHIGITI, J  
JULY 16, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD ..... RESPONDENT**

**AND**

**INTERTEK TESTING SERVICES EA LIMITED ..... INTERESTED PARTY**

**ENERGY REGULATORY COMMISSION ..... INTERESTED PARTY**

**AND**

**SGS KENYA LIMITED ..... EX PARTE APPLICANT**

**RULING**

1. The application before this Court is the Chamber Summons dated 7<sup>th</sup> November, 2024 brought Pursuant to Article 159 [2] [d] of *the Constitution*, Section 1A., 1B & 3A of the *Civil Procedure Act*, Paragraph 11 [1] [2] & [4] of the Advocates [Remuneration] Order, Order 9 & 10 of the *Civil Procedure Act* and all other enabling provisions of the law. It seeks the following orders: -
  - a. That this Application be certified as urgent and heard on priority basis in the first instance.
  - b. That the Honourable Court be pleased to enlarge time for the Applicant to file a reference against the ruling of the Taxing Officer delivered on 17<sup>th</sup> October 2024.



- c. That consequent to grant of order a] above, this Application together with the Notice of Objection filed herein be deemed properly filed before the Court.
  - d. That the ruling of the Taxing Officer delivered on 17<sup>th</sup> October 2024 pertaining to the Re Taxation of the 1<sup>st</sup> Interested Party's Party and Party Bill of Costs dated 29<sup>th</sup> October 2019 be set aside.
  - e. That the Honourable Court be pleased to re-tax cost due to the Applicant relating to the instruction and getting up fees in the 1<sup>st</sup> Interested Party's Party and Party Bill of Costs dated 29<sup>th</sup> October 2019.
  - f. That in the alternative to order c] above, honorable court be pleased to refer the matter back for re-taxation of the 1<sup>st</sup> Interested Party's Party and Party Bill of Costs dated 29<sup>th</sup> October 2019 before another Taxing Officer with appropriate directions thereon.
  - g. That costs of this Application be provided for.
2. The application is supported by a Supporting Affidavit dated 1<sup>st</sup> November, 2024 by Bosire Nyamori sworn on even date.
  3. The application is predicated on the Applicant's Party and Party Bill of Costs dated 29<sup>th</sup> October 2019, seeking taxation of Kshs. 33,848,316.60 as fees for professional services rendered in J.R. Misc. Application No. 496 of 2017 – S.G.S. Kenya Ltd v Energy Regulatory Commission.
  4. On 15<sup>th</sup> June 2023, the Bill was taxed at Kshs. 4,668,608.00 by the Taxing Master and having been dissatisfied with the outcome, the Exparte Applicant filed a reference, and by a ruling of Hon. Justice James Ngaah, the matter was remitted for re-taxation before a different taxing officer.
  5. Following re-taxation, the new Taxing Officer taxed the Bill at Kshs. 690,316.70 and granted the Applicant 14 days to file a reference. The Applicant now contests the re-taxation, arguing that the Taxing Officer erred both in law and fact by awarding instruction and getting-up fees that were grossly low, disproportionate, and unreasonable in the circumstances.
  6. The Applicant deposes that the taxation as rendered amounts to substantial oppression and injustice.
  7. It is its case that the learned Taxing Officer erred both in law and fact by failing to exercise her discretion and powers under the Advocates Remuneration Order properly, reasonably, fairly, and judiciously. While the delay in filing the Reference is regrettable, the Applicant submits that it is justifiable and not inordinate, and in any event, this Honourable Court is vested with the requisite jurisdiction and discretion to grant an extension of time within which to file the Reference
  8. The interested party/applicant filed written submissions dated 28<sup>th</sup> March, 2025.
  9. It is submitted that paragraph 11 of the Advocates Remuneration Order [ARO] requires that a party objecting to the Taxing Officer's decision must serve written notice within fourteen days specifying the items objected to. The Taxing Officer must then provide reasons, and the objector may apply to a judge within fourteen days by Chamber Summons, stating the grounds of objection. Appeals to the Court of Appeal require the judge's leave. The High Court may, at its discretion, enlarge the time for any step upon application by Chamber Summons with at least three days' notice, even if the deadline has expired.
  10. The Supreme Court in County Executive of Kisumu v County Government of Kisumu & Others [2017] eKLR held that such extension is an equitable remedy at the Court's discretion, requiring the



applicant to satisfactorily explain the entire delay, consider prejudice to respondents, timeliness of the application, and, where relevant, public interest, with each case decided on its own facts.

11. It is contended that the ruling ought to be set aside on the grounds that the Taxing Officer erred both in law and fact by awarding instruction and getting-up fees that were manifestly disproportionate, unreasonable, and so inadequately low as to amount to substantial oppression and injustice. The Applicant relies on Schedule 6A[1][ii] of the Advocates Remuneration Order, which clearly prescribes the appropriate basis for instruction fees.
12. Further, the interested party/applicant contends that the delay was not inordinate and should not bar it from contesting the ruling, being a statutory body, it has a complex internal approval process for challenging litigation outcomes, which contributed to the delay in filing the reference and the delay was further compounded by two public holidays on 20<sup>th</sup> October 2024 and 1<sup>st</sup> November 2024.
13. Reliance is placed in *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others* [2006] eKLR where the court emphasized that the Taxing Officer’s discretion must be guided by a clear, detailed, and convincing explanation of any complexity, novelty, extensive work, or large document volumes involved to justify higher costs.
14. It is submitted that Section 27 of the *Civil Procedure Act* vests the court with full discretion to determine costs in suits, including by whom, out of what property, and to what extent costs are payable, and provides that costs shall ordinarily follow the event unless the court, for good reason, orders otherwise. This was affirmed in *David Kiptum Korir v Kenya Commercial Bank & Another* [2021] eKLR, where the court emphasized that costs generally follow the cause unless justified otherwise.
15. It is the interested party/applicant’s submission that costs should follow the event, and prays that this Honorable Court allows its application with costs and interest pursuant to Sections 26 and 27 of the *Civil Procedure Act*.

#### **Exparte Applicant’s case;**

16. The Exparte in rebuttal of the Interested Party’s/Applicant’s Chamber Summons filed grounds of opposition dated 14<sup>th</sup> February, 2025 opposing the application on the following grounds:
  1. The application is fatally defective and offends Rule 8 of the Advocates Practice Rules which bars an Advocate from swearing an affidavit on contentious matters of fact as to why the reference was not filed within time.
  2. The application is fatally defective and offends Rule 11[1] of the Advocates Remuneration Order as the Applicant never gave notice to the Taxing Master of the items objected to.
  3. The Application is couched as an appeal against the decision of Justice Jairus Ngaah of 29<sup>th</sup> June, 2024 which held that the value of the suit cannot be discerned from the pleadings.
  4. There is no error of principle to warrant the interference of the Taxing Master’s discretion especially since the taxation arose from judicial review proceedings.
  5. This application is purely intended to vex the Respondent and should be dismissed with costs.
17. The Exparte Applicant filed written submissions dated 16<sup>th</sup> June, 2025.



18. It is submitted that it is well-established that this Honourable Court has the power to enlarge time for the filing of a reference. This discretion is expressly conferred under Paragraph 11[4] of the Advocates Remuneration Order, which provides:

“The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph [7] or subparagraph [2] for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

19. It is contended that a perusal of the affidavit sworn by Bosire Nyamori reveals that no explanation has been provided for the delay in filing the reference. It is a settled principle that for this Honourable Court to exercise its discretion to enlarge time under Paragraph 11[4] of the Advocates Remuneration Order, the applicant must offer a satisfactory and reasonable explanation for the delay. In the absence of such an explanation, the Court is deprived of the necessary basis upon which to consider and grant the extension sought as was held in *Republic v Kenyatta University & Another Ex parte Wellington Kihato Wamburu* [2018] eKLR.

20. Further, the 1<sup>st</sup> Interested Party seeks to have the Notice of Objection deemed as properly filed. However, a review of the affidavit sworn by Bosire Nyamori confirms that no such Notice of Objection has been annexed. Pursuant to Rule 11 of the Advocates Remuneration Order, a party aggrieved by the decision of the Taxing Officer is required, in mandatory terms, to give notice in writing to the Taxing Officer specifying the items objected to. Failure to comply with this requirement is fatal to the reference. The Applicant has neither demonstrated sufficient cause for the Court to exercise its discretion in its favour, nor provided any basis upon which the Court can deem the non-existent Notice of Objection as duly filed.

21. It is further submitted that the High Court will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle. In *Republic v Ministry of Agriculture & 20 Others Ex- Parte Muchiri W’Njuguna* [2006] eKLR Hon. Justice J.B. Ojwang [Retired] stated as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other... The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.”

22. The Ex parte Applicant submits that an error of principle arises where a taxing officer misdirects themselves on the applicable legal standards, applies the wrong criteria, or fails to consider relevant legal provisions, resulting in an unreasonable or unjust award. In *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] Civil Appeal No. 206 of 2006, the Court held that such an error occurs when the taxing officer proceeds on a wrong principle or fails to exercise discretion judiciously. In the instant case, the Court in its ruling of 29<sup>th</sup> June 2024 held that the value of the subject matter could not be discerned from the pleadings a finding that was not appealed. Despite this, the Taxing Master proceeded to award instruction fees of Kshs. 500,000.00 and getting-up fees at one-third of that amount [Kshs. 166,666.67], without properly applying Schedule 6[1][j][i] and [ii] of the



Advocates Remuneration Order, thereby committing an error of principle which is the subject of the present application

### **Analysis and Determination;**

23. The court has looked at the application and the response thereto as well as the submissions that parties relied upon to advanced their case.
24. The applicant has not tendered any tangible or cogent evidence to explain why there was a delay in the filing of the reference.
25. The Supreme Court in SC Application No. E029 of 2023 Okiya Omtata Okiiti v Cabinet Secretary for National Treasury and Planning the court held as follows:

“...  
[26] Taking all the above matters into account, we must state that, this Court has on several instances underscored the importance of compliance with its Orders, Rules and Practice Directions. With regard to filing and service of documents within the requisite time, the Court has in a long line of decisions stressed that it will not countenance breaches of timelines set by the Rules or by the Court, and affirmed the general constitutional principle that justice shall not be delayed. See Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others, SC Petition No. 5 of 2016; [2018] eKLR and Kenya Railways Corporation & 2 Others v Okiiti & 3 Others, SC Petition [Application] No. 13 of 2020 & Petition 18 of 2020 [Consolidated]]; [2022] KESC 68 [KLR]. It goes without saying that compliance with court orders goes to the root of the rule of law as well as the dignity of any court.

[27] Neither the *Supreme Court Act* nor the Supreme Court Rules or this Court’s Practice Directions permit the applicants to file written submissions in the manner that they did. Rule 31 of this Court’s Rules stipulates that an interlocutory application, such as the applicants’, should be filed together with written submissions. Therefore, we find it irregular for parties to file joint submissions as well as separate submissions at the same time. Not only would it be repetitive but also unnecessary and a waste of precious judicial time. In any event, based on the directions issued, the applicants’ submissions were to be served together with the Motion. In the end and without belabouring the point, we hereby strike out the four sets of the applicants’ written submissions. In addition, we caution litigants to adhere to the Court’s Practice Directions relating to the length of written submissions lodged before the Court, as explained in the preceding paragraph.

[28] Moving onto the respondents’ responses and/or submissions, we are not convinced with the explanation for the delay. To begin with, litigants and advocates should accord this Court the respect and decorum it deserves as the apex Court of the land. Further, nothing has been placed before us to substantiate the contention by the 5th and 9th respondents that the delay was occasioned by difficulties in accessing the Court’s online platform.

[29] Be that as it may, to accede to the respondents’ prayer to deem the responses and/or submissions filed out of time as properly before the Court is tantamount to sanctioning an illegality. The respondents ought to have first sought leave of the Court to file their responses out of time prior to filing



the same. See *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others*, SC Applic. No 16 of 2014; [2014] eKLR and *University of Eldoret & another v Hosea Sitienei & 3 Others*, SC Applic. No. 8 of 2020; [2020] eKLR...”[emphasis added]

26. Statutory provisions must at all times be complied with, and when it comes to timelines, it’s very critical that a party who is agreed by the outcome of the Taxing Masters determination must follow certain timelines with trick patterns.
27. In the case of *Okiya Omtata*, where documents are filed out of time, the courts have their discretionary report, strike them out.

**Disposition;**

28. The applicant has failed to establish a case towards the ground of the old.

Order;

The application is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JULY 2025.**

.....

**J. CHIGITI [SC]**

**JUDGE**

